

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.15788 OF 2004

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ORAL ORDER:

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This writ petition is filed seeking a declaration that the action of the respondent-Divisional Forest Officer, Nizamabad, in not granting saw-mill-cum-depot licence to the petitioner, as arbitrary and illegal.

It is not in dispute that the petitioner/saw-mill was established in the year 1986 at Nizamabad. It is also not in dispute that prior to 3.08.1998 the Nizamabad District was exempted from the operation of the A.P. Saw Mill (Regulation) Rules, 1969 (for short "the Rules"), and therefore, the petitioner/saw-mill did not possess any licence. However, there were allegations that the petitioner as well as similarly situated saw millers taking advantage of the exemption from the provisions of the Rules, were indulging in illegal activities of smuggling of teak timber. On an allegation that the petitioner indulged in various offences of bringing illicit teak timber to his saw-mill, a show cause notice was issued by the Divisional Forest Officer, Nizamabad dated 12.08.1996 calling upon the petitioner to explain the alleged transportation of illicit and smuggled timber to the saw-mill under the cover of fake and forged permits. Aggrieved by the same, the petitioner approached this Court by filing W.P.No.22314 of 1996. The said writ petition was allowed along with a Batch of similar writ petitions. It appears that the show cause notices issued subsequently by the respondent were also challenged by the petitioner by filing W.P.No.4301 of 1997 and etc., which were also allowed and the same were confirmed by a Division Bench in W.A.No.1655 of 1998 and Batch.

Subsequently, after the amendment to A.P. Saw Mill (Regulation) Rules, 1969 under G.O.Ms.No.99 dated 17.07.1998 making the Rules applicable to the entire State of Andhra Pradesh, the petitioner applied for licence. Since the request of the petitioner for grant of licence was rejected, the petitioner filed W.P.No.26864 of 1999, which was allowed directing the respondents therein to grant licence to the petitioner. On an appeal by the Department, a Division Bench of this Court by Judgment dated 27.03.2003 in W.A.No.42 of 2003 and Batch upheld the action of the respondents in rejecting the application for grant of licence in view of pendency

of the criminal cases The petitioner states that subsequently C.C.Nos.791 and 795 of 1995 on the file of the Court of Additional Judicial First Class Magistrate, Nizamabad, filed against the petitioner ended in acquittal and in both the said cases it was found that the petitioner was not guilty of the offences punishable under Sections 420, 468 and 471, IPC. Admittedly, the said judgments have become final. Thereafter, the petitioner made an application dated 18.07.2003 requesting to issue a licence to run the saw-mill, however, the respondent failed to respond. Hence the writ petition.

Learned counsel for the petitioner submits that since the petitioner was acquitted in both the criminal cases, and since no other cases are pending against him, the respondent was not justified in not considering his request for grant of licence.

On the other hand, the learned Government Pleader contends that though two criminal cases i.e., C.C.Nos.791 and 795 of 1995, ended in acquittal, the petitioner also involved in one more case i.e., C.C.No.130 of 2003, on the file of the Court of Judicial First Class Magistrate, Nizamabad.

A detailed counter-affidavit has been filed on behalf of the Divisional Forest Officer, Nizamabad, stating that the petitioner is an accused in C.C.No.130 of 2003 and that he is also not entitled to grant of licence as sought by him in view of the directions issued by the Supreme Court in **T.N. Godavarman Thirumalpad v. U.O.I.**

The learned counsel for the petitioner disputes the version of the respondent and filed an affidavit in reply stating that in the charge-sheet filed by CBCID before the IX Metropolitan Magistrate, Nampally, the name of the petitioner was not shown. Thereafter, the Divisional Forest Officer, Nizamabad, filed additional counter-affidavit, in which it is stated that as per the note given by Inspector of Police, C.I., RCIU, Cyberabad, they have taken 76 original transit permits for investigation, however, since no permits pertaining to the petitioner and another saw-mill owner by name Md. Ameen, proprietor of Decent saw mill, Nizamabad, were there, the name of the petitioner and the other saw mill owner Md. Ameen, were deleted and charge-sheet was filed against the other eight saw-mill owners, who were arrayed as A1 to A8.

Thus, it is clear that the petitioner is not an accused in C.C.No.130 of 2003. The respondent has not placed any other material before this Court to show that any

other criminal case is pending against the petitioner. If that be so, and keeping in view the fact that the criminal cases ie., C.C.Nos.791 and 795 of 1995 registered against the petitioner ended in acquittal, the respondent ought to have considered his request for grant of licence on merits.

However, the learned Government Pleader submits that in view of the Judgment of the Supreme Court in **T.N. Godavarman Thirumalpad v. U.O.I** (1 supra), there is a total ban for granting fresh licence. On a perusal of the Judgment of the Supreme Court, particularly the directions issued by the Supreme Court, it does not appear that there is any absolute bar for issuing licence. The relevant portion of the said judgment of the Supreme Court may be extracted hereunder:

“ No State or Union Territory shall permit any unlicensed saw-mill, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any saw-mill, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance of this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee. “

From the above, it is clear that the application for grant of licence to establish a saw-mill has to be processed through the Central Empowered Committee, and if the Central Empowered Committee permits, it is always open to the respondent to grant licence under the A.P. Saw Mill (Regulation) Rules, 1969.

The learned counsel for the petitioner vehemently contended that since the petitioner was running the saw-mill from the year 1986, by which time Nizamabad was exempted from obtaining any licence under A.P. Saw Mill (Regulation) Rules, 1969, there is no need to place the application of the petitioner before the Central Empowered Committee. I am unable to agree with the said contention, since admittedly by virtue of the amendment to the Rules, as on today, it is necessary even for the saw-mills established in the District of Nizamabad to obtain licence under the A.P. Saw Mill (Regulation) Rules, 1969. Hence, it is necessary to process the application of the petitioner for grant of licence through the Central Empowered Committee, as per the directions of the Supreme Court.

Accordingly, the writ petition is disposed of with a direction to the respondent to

consider the request of the petitioner for issuance of licence, as sought in his application dated 18.07.2003, and to place the same before the Central Empowered Committee within four week from the date of receipt of this order, in terms of the judgment of the Supreme Court in **T.N. Godavarman Thirumalpad v. U.O.I.** (1 supra). In case permission is granted by the Central Empowered Committee, the respondent shall take necessary further steps for grant of licence to the petitioner in accordance with law.

The Writ Petition is accordingly disposed of. No costs.

(G. ROHINI, J.)

27th January, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI
WRIT PETITION No.15788 OF 2004

27th January, 2006.

Between:

B.R. Saw Mill,

Represented by its partner –

Basharath Ahmed, Nizamabad. .. Petitioner.

And

The Divisional Forest Officer,
Nizamabad, Nizamabad District. .. Respondent.